ATTACHMENT 11

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

In the Matter of:	)	
	)	
Joint Petition for Arbitration of	)	Docket No. 18409-U
NewSouth Communications Corp.,	)	
NuVox Communications, Inc.,	)	Filed: July 8, 2005
KMC Telecom V, Inc., KMC Telecom III	)	
LLC, and Xspedius Communications, LLC on	)	
Behalf of its Operating Subsidiaries Xspedius	)	
Management Co. Switched Services, LLC and	)	
Xspedius Management Co. of Atlanta, LLC	)	
	)	
Of an Interconnection Agreement with	)	
BellSouth Telecommunications, Inc. Pursuant	)	
to Section 252(b) of the Communications Act	)	
of 1934, as Amended	)	

BELLSOUTH TELECOMMUNICATIONS, INC. POST-HEARING BRIEF

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ATTORNEYS FOR BELLSOUTH TELECOMMUNICATIONS, INC.

(Tr. 470-71). Likewise, the Kansas Commission recently refused to find that SBC had a duty to provide the transit function at a TELRIC rate. *See In the Matter of the Petition of the CLEC Coalition for Arbitration Against Southwestern Bell Telephone, L.P.*, Docket No. 05-BTKT-365-ARB at 102 (Feb. 16, 2005).[33] The Commission should resolve this issue the same way it did in the transit traffic proceeding.[34]

Item 86B:* (B) *How should disputes over alleged unauthorized access to CSR information be handled under the Agreement? (Attachment 6, Sections 2.5.6.2 and 2.5.6.3)

The crux of this issue is simple: within how many days should a party be required to produce a Letter of Authorization ("LOA") verifying that the party had the right to review a customer service record if such an LOA is requested? As explained below, and as conceded by the Joint Petitioners, two weeks is more than a sufficient amount of time for either party to produce such an LOA upon request.

Joint Petitioners concede that customer service record ("CSR") information contains Customer Proprietary Network Information ("CPNI"), and that BellSouth and the Joint Petitioners have an obligation under federal law to protect the unauthorized disclosure of CPNI. (Tr. at 552). Given such obligations, it is no surprise that the parties have agreed to refrain from accessing CSR information without an appropriate LOA from a customer and to "access CSR information only in strict compliance with applicable laws." (Tr. at 552-553; *see* Att. 6, § 2.5.5)). Regarding LOAs, the parties have agreed that upon request, a party "shall use best efforts" to provide an appropriate LOA within seven (7) business days. (Tr. at 553-554; Att. 6, § 2.5.5.1)). Seven business days equates to at least nine (9) calendar days. (Tr. at 554).

[33] The Texas Commission reached a different conclusion in *Arbitration of Non-Costing Issues For Successor Interconnection Agreements to the Texas 271 Agreement*, T.P.U.C., Docket No. 28821 at 30 (Feb. 23, 2005).
[34] BellSouth reserves all rights relating to the Commission's authority to establish a non-TELRIC rate for the transit function.

ATTACHMENT 12

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A").	))))	Case No. TO-2005-0336

ARBITRATION ORDER

Issue Date: July 11, 1005

Effective Date: July 11, 2005

> [T]he rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of the trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

Second, 47 C.F.R. 51.703(b) states that "a LEC may not assess charges on any other telecom carrier for telecom traffic that originates on the LEC's network." Together, these rules dictate that both carriers bear a cost responsibility for the interconnection facility because each party is using the interconnection facility to deliver traffic to the other party.

The Commission concurs with the Arbitrator's finding that, in general, each party is solely responsible for the facilities on its side of the POI. Nonetheless, the Commission agrees with Sprint that each party must be financially responsible for its own outgoing traffic. Where the interconnection is via a two-way trunk, the cost of that facility must necessarily be shared. The Arbitrator's Report is modified accordingly and the parties are directed to adopt Sprint's proposed language.

3. Should non-251(b) or (c) services such as Transit Services be negotiated separately?

Sprint IC Issue 7: Should non 251(b) or (c) services such as Transit Services be negotiated separately?

Discussion and Decision:

Sprint's IC Issue 7 was listed at Section I(C).1 of the Final Arbitrator's Report, but the description of the issue given there was evidently incorrect. Nonetheless, the Arbitrator did determine AT&T Network A-C 11 Issue 4(c), CLEC Coalition IC Issue 1, ITR Issue 4, and NIA Issue 5(a), and MCI RC Issue 18 in that section, all of which are identical to Sprint's IC Issue 7. Sprint is thus correct. The Arbitrator's Report is modified accordingly and the parties are directed to adopt Sprint's proposed language set out below:

> 17.2.1 Transit service providers are rightly due compensation for the use of their tandem switching and common transport elements when

providing a transit service. This compensation is based on TELRIC pricing and appears in Appendix PRICING.- All Traffic.

4. Future declassifications:

SPRINT UNE 3: Should changes in SBC MISSOURI'S unbundling obligation due to lawful action be incorporated into the terms and conditions pursuant to the change in law provisions in the agreements General Terms and Conditions?

Discussion:

Sprint states that there are important technical errors in the Arbitrator's decision matrix regarding UNE Issue 3 that appear to have caused a substantive error as well. The Commission should correct the technical error and adopt all Sprint's proposed language for Issue 3 while rejecting all SBC's proposed language that is disputed by Sprint.

The technical error begins on page 124-6 of the Arbitrator's UNE decision matrix, Attachment III. A. Part 1, where the Arbitrator ruled on proposed contract section 8.4.2. The Sprint language that appears on page 125 next to SBC's section 8.4.3 should actually be added to the end of Sprint's proposed Section 8.4.2 that appears in the Arbitrator's decision matrix and also in the joint DPL filed by the parties. The effect of splitting Sprint's proposed language for section 8.4.2 into two pieces in the Sprint column of the decision matrix is to throw off the alignment of the Sprint proposed language in the remainder of the Arbitrator's decision matrix. For instance, Sprint's proposed section 8.4.3 should be lined up with SBC's proposed section 8.4.3. Sprint's proposed section 8.4.3.1 gets pushed down the matrix and is improperly lined up with SBC's proposed 8.4.4 instead of SBC's proposed 8.4.3.1. Again, this should be remedied by tacking the language on page 125, which begins "If Sprint does not dispute the declassification" to the end of Sprint's section 8.4.2, and then realigning the remaining contract sections.

ATTACHMENT 13

P.U.C. DOCKET NO. 28821

ARBITRATION OF NON-COSTING ISSUES FOR SUCCESSOR INTERCONNECTION AGREEMENTS TO THE TEXAS 271 AGREEMENT	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS

ARBITRATION AWARD—TRACK 1 ISSUES

Table of Contents

determining the tandem interconnection rate currently in the T2A.[120] Therefore, the Commission readopts the blended tandem rate and the 3 to 1 traffic threshold rationale for calls terminated on a multifunction switch specified in Docket No. 21982.[121] Additionally, the Commission rejects the LATA-by-LATA test proposed by SBC Texas[122] because of its arbitrary nature and inconsistency with the method adopted by the Commission in Docket No. 21982.

Provision of Transit Services at TELRIC Rates (DPL Issue No. 17)

Consistent with prior Commission decisions in the Mega-Arbitrations, Docket No. 21982 and the predecessor T2A agreement, the Commission finds that SBC Texas shall provide transit services at TELRIC rates. The Commission notes that there has been no change in law or FCC policy to warrant a departure from prior Commission decisions on transit service. Furthermore, a federal court found that a state commission may require an ILEC to provide transiting to CLECs under state law.[123] Given SBC Texas's ubiquitous network in Texas and the evidence regarding absence of alternative competitive transit providers in Texas,[124] the Commission concludes that requiring SBC Texas to provide transit services at cost-based rates will promote interconnection of all telecommunications networks. In the absence of alternative transit providers in Texas, the Commission finds that SBC Texas's proposal[125] to negotiate transit services separately outside the scope of an FTA § 251/252 negotiation may result in cost-prohibitive rates for transit service. The Commission also notes SBC Texas's concerns regarding billing disputes related to transit traffic and reaffirms its decision in Docket No. 21982 that terminating carriers must directly bill third parties that originate calls and send traffic over SBC Texas's network.[126]

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[120] Direct Testimony of Charles D. Land (Attachment 12: Compensation), CLEC Joint Petitioners Ex. 1 at 12-15.

[121] Docket No. 21982, Revised Award at 52-53 (Nov. 15, 2000).

[122] Direct Testimony of J. Scott McPhee, SBC Texas Ex. 24 at 19.

[123] *Michigan Bell Tel. Co. v. Chappelle*, 222 F. Supp. 2d 905, 918 (E.D. Mich. 2002).

[124] Tr. at 252-253 (Sept. 22, 2004).

[125] Direct Testimony of J. Scott McPhee, SBC Texas Ex. 24 at 84.

[126] Docket No. 21982, Revised Arbitration Award at 64 (Aug. 31, 2000).

ATTACHMENT 14

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-19, SUB 454

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Verizon South, Inc., for Declaratory Ruling that Verizon is Not Required to Transit InterLATA EAS Traffic between Third Party Carriers and Request for Order Requiring Carolina Telephone and Telegraph Company to Adopt Alternative Transport Method	)	ORDER DENYING PETITION

BY THE COMMISSION: On January 30, 2002, the Commission issued an Order establishing extended area service (EAS) between the Durham exchange of Verizon South, Inc. (Verizon), the Pittsboro exchange of Carolina Telephone and Telegraph Company (Carolina or, collectively with Central Telephone Company, Sprint), and the Hillsborough exchange of Central Telephone Company (Central or, collectively with Carolina Telephone and Telegraph Company, Sprint) (the EAS Order).[1] This EAS was implemented on June 7, 2002. EAS from the Durham exchange to the Pittsboro exchange and zero-rated expanded local calling from the Durham exchange to the Hillsborough exchange were implemented earlier in the tax flow-through docket, Docket No. P-100, Sub 149.

Shortly after the EAS was implemented, the Public Staff began receiving complaints from customers in the Pittsboro exchange who were unable to complete calls to numbers in the Verizon Durham exchange as either local or toll calls. On investigating these complaints, the Public Staff learned that Verizon was blocking calls from the Pittsboro exchange to competing local provider (CLP) and commercial mobile radio service (CMRS) end-users in the Durham exchange. Verizon stated that it blocked the calls because "the proper interconnections between the CLPs, CMRSs and Sprint have not yet been established."[2] Subsequently, the Public Staff learned that Verizon had also begun blocking calls from Central's Roxboro exchange to CLP customers in Durham, calls that it previously had been completing. The Roxboro/Durham route is a two-way interLATA EAS route that has been in service since February 14, 1998. IntraLATA EAS calls from the Hillsborough exchange to CLP end-users in Durham have not been blocked. In its letters

1 *In the Matter of Carolina Telephone and Telegraph Company – Hillsborough and Pittsboro to Durham Extended Area Service, Order Approving Extended Area Service*, Docket No. P-7, Sub 894 (January 30, 2002).

2 See Verizon's letters from Joe Foster to Nat Carpenter dated July 11, 2002, and October 31, 2002, attached as Exhibits A and B to Verizon's Petition.

to the Public Staff, Verizon agreed to discontinue its blocking until the matter had been resolved by the Commission.

On December 9, 2002, Verizon filed a Petition for Declaratory Ruling (Petition) requesting "that the Commission issue a ruling clarifying that Verizon is not required to transit Sprint's InterLATA EAS traffic destined to third party CLPs/CMRS providers" and "that the Commission direct Sprint to cease delivering traffic destined for third-parties to Verizon and make alternative arrangements for proper delivery of such traffic."

On December 10, 2002, the Commission issued an Order seeking comments and reply comments. Petitions to intervene have been filed by The Alliance of North Carolina Independent Telephone Companies (the Alliance); BellSouth Telecommunications, Inc., (BellSouth); AT&T Communications of the Southern States, LLC, (AT&T); ALLTEL Carolina, Inc., and ALLTEL Communications, Inc., (collectively, ALLTEL); KMC Telecom, Inc. (KMC); ITC^DeltaCom, Inc., (ITC); Level 3 Communications, Inc., (Level 3); US LEC of North Carolina, Inc., (US LEC); and Barnardsville Telephone Company, Saluda Mountain Telephone Company, and Service Telephone Company (collectively, TDS Companies). All petitions to intervene were allowed.

ITC, Level 3 and KMC, US LEC, Sprint, the Public Staff, BellSouth, and AT&T filed initial comments. Verizon, the Alliance, Sprint, and the Public Staff filed reply comments.

On May 16, 2003, the Commission issued an Order scheduling an oral argument on June 19, 2003, to consider:

(1) Whether Verizon is legally obligated to perform a transiting function or to act as a billing intermediary in regards to third-party traffic, and

(2) If so, the principles that should inform the rates, terms and conditions for such services and the appropriate procedure for arriving at a decision about them.

On May 23, 2003, Verizon filed a Motion for Clarification requesting that the Commission make clear that the oral argument would address only legal and not factual issues. On June 3, 2003, Sprint filed a response to Verizon's Motion for Clarification in which it argued that the only issues to be resolved in this matter are legal.

On June 5, 2003, the Presiding Commissioner issued an Order clarifying that the purpose of the oral argument was to decide whether Verizon is obligated as a matter of law pursuant to the Telecommunications Act of 19963 and other applicable provisions of law to perform a transiting function or to act as a billing intermediary with regards to third-party traffic with particular reference to the third-party InterLATA EAS calls at issue in this docket. The Order reserved to Commissioners the right to ask questions of the

3 47 U.S.C.A. §§ 151 *et seq.*, "the Act."

participants at the oral argument bearing upon the regulatory process should the matter be decided in one way or another.

The oral argument was heard by the Commission, Commissioner Joyner presiding, on July 15, 2002.

On August 29, 2003, the Commission received briefs and/or proposed orders from the following: Verizon, BellSouth Telecommunications, Inc. (BellSouth), Sprint, the Public Staff, AT&T Communications of the Southern States, Inc. (AT&T), and US LEC of North Carolina, Inc (US LEC). Of these, Sprint, the Public Staff, AT&T, and US LEC may be classified as proponents of the duty to provide the transiting function as a matter of law, while Verizon and BellSouth may be classified as opponents. Since the arguments of the proponents are largely the same, their arguments will be summarized collectively as those of the "Proponents." Likewise, those of Verizon and BellSouth will be summarized collectively as those of the "Opponents." Since many of the citations to the law are the same, but with the Opponents and Proponents putting a different construction on them, the text of the most common citations is set out below.

Most Common Citations

Telecommunications Act of 1996 (TA96)

Sec. 251(a) General Duty of Telecommunications Carriers.—Each telecommunications carrier has the duty—

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers....

Sec. 251(b) Obligations of All Local Exchange Carriers—Each local exchange carrier has the following duties....

(5) Reciprocal Compensation.—The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Sec. 251(c) Additional Obligations of Incumbent Local Exchange Carriers.—In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:....

(2) Interconnection.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself...or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

State Law

G.S. 62-110(f1) The Commission is authorized to adopt rules it finds necessary to provide for the reasonable interconnection of facilities between all providers of telecommunications services....

G.S. 62-42(a) Except as otherwise limited in this Chapter, whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds: (1) That the service of any public utility is inadequate, insufficient or unreasonably discriminatory...or (5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity, the Commission shall enter and serve an order directing that such...additional services or changes shall be made or affected within a reasonable time prescribed in the order....

Rule R17-4. Interconnection. (a) Interconnection arrangements should make available the features, functions, interface points and other service elements on an unbundled basis required by a requesting CLP to provide quality services. The Commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request. (b) Interconnection arrangements should apply equally and on a nondiscriminatory basis to all CLPs....

Summary of Proponents' Arguments

The thrust of the Proponents' arguments was that Verizon is obligated under TA96 as well as under State law to perform a transiting function. They argued that this requirement is clearly in the public interest and is in fact necessary to effectuate the purposes of TA96, which include the preserving and extending of the ubiquitous telecommunications network and the encouragement of competition.

With respect to provisions in TA96, the Proponents argue that the transiting obligation follows directly from the obligation to interconnect and the right of non-incumbent carriers to elect indirect interconnection. *See*, Section 251(a)(1) (all carriers to connect directly or indirectly with other carriers) and Section 252(c)(2) (additional ILEC duties regarding interconnection). Transit traffic is an important option to have available because it offers a simple and economical method of interconnection for carriers exchanging a minimal amount of traffic. It was routinely used without objection prior to the enactment of TA96. Otherwise, such carriers would be forced to created redundant and uneconomic arrangements to deliver their traffic. As such, the obligation to provide transit service is necessary to give meaning to the right to interconnect directly

under TA96 and in fulfillment of its purposes. The right to transit service exists independently of any given interconnection agreement, although such agreements may certainly establish procedures for it.

Concerning the *Virginia Arbitration Order* of the FCC's Wireline Competition Bureau (July 17, 2002), the Proponents noted that, contrary to Verizon's representations concerning the import of that decision, the Bureau expressly refused to declare that an ILEC is not obligated to provide transit service but rather, in view of the fact that the FCC had not previously decided the issue, it declined to rule on the issue in the context of its delegated arbitration authority.

The Proponents also maintained that authority to require the transit function could be found under State law. For example, G.S. 62-110(f1) allows the Commission to enact rules regarding interconnection. Rule R17-4 expresses similar sentiments. G.S. 62-42 bears on the matter of compelling efficient service, which would certainly be impaired if there was no duty to provide transit service. Other states, notably Ohio and Michigan, have held for a transit service obligation. None of the Proponents, however, argued that there was a necessary duty for Verizon to perform a billing intermediary function.

Summary of Opponents' Arguments

The key argument of the Opponents was that the provisions of TA96 cited by the Proponents do not create obligations or duties that are separate from interconnection agreements. No such transit obligation, either explicitly or through fair inference, can be found in TA96. Any provision of transit is purely voluntary on the ILECs' part. The Opponents further argue that, since TA96 in both Sections 251 and 252 creates a comprehensive framework with the negotiation and arbitration of interconnection agreements as its centerpiece, this preempts the states from enacting other obligations, such as a transit obligation, based on state law.

With respect to the *Virginia Arbitration Order*, the Opponents contended that the gravamen of that decision was not only that transit services need not be provided at TELRIC rates, they need not be provided at all, since the Bureau stated that it did not find "clear Commission precedent or rules declaring such a duty."

The Opponents declared that at least one state, New York, had decided against a transit obligation, while several others, such as Maryland, Wisconsin, and Michigan, have expressed skepticism about any billing intermediary obligation.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to find that Verizon is obligated to provide the transit service as a matter of law for the

reasons as generally set forth by the Proponents. Accordingly, Verizon's Petition for Declaratory ruling in its favor is denied.

The Commission is persuaded that a transit obligation can be well supported under both state and federal law. The Commission does not agree with the Opponents' view that duties and obligations under TA96 do not or cannot exist separately from their incarnation in particular interconnection agreements pursuant to the negotiation and arbitration process—or, as Verizon put it, "[TA96] contemplates only duties that are to be codified in interconnection agreements, not duties that apply independent of interconnection agreements."

Aside from not being compelled by the history, structure, or real-world context of TA96, the "interconnection agreements-only" approach suggested by the Opponents would lead to a number of undesirable, even absurd, results. For example, it would call into question the status of generic dockets, which are an efficient means by which the Commission can resolve interconnection issues arising under TA96 *en masse*. Apparently, the state commissions would be limited to arbitrating interconnection agreements one-by-one. There is simply no evidence that Congress intended to abolish generic dockets by the states; indeed, quite the opposite is suggested. *See*, for example, Section 251(d)(3) (Preservation of State Access Regulations). *As* a practical consequence, adoption of the Opponents' view would immoderately multiply the number of interconnection agreements—and the economic costs relating to entering into them—because the corollary of the Opponents' view is that, in order to fully effectuate rights and obligations, everyone must have an interconnection agreement with everybody else, even if the amount of traffic exchanged is minimal. The overall impact would be a tendency to stifle competition by the imposition of uneconomic costs as, for example, by the construction of redundant facilities.

If there were no obligation to provide transit service, the ubiquity of the telecommunications network would be impaired. Indeed, in a small way this has already happened in this case when Verizon refused to transit certain traffic. It should also be noted that the privilege of initiating arbitration proceedings is not symmetrical. Even if an ILEC, such as a smaller one with less than 200,000 access lines, urgently desires an interconnection agreement from a CLP or CMRS, it may not be able to get one. These effects illustrate the ultimate unsupportability of the Opponents' view of their obligations as ILECs to interconnect indirectly—essentially, as matters of grace, rather than duty.

The fact of the matter is that transit traffic is not a new thing. It has been around since "ancient" times in telecommunications terms. The reason that it has assumed new prominence since the enactment of TA96 is that there are now many more carriers involved—notably, the new CMRS providers and the CLPs—and the amount of traffic has increased significantly. Few, if any, thought about complaining about transit traffic until recently. It strains credulity to believe that Congress in TA96 intended, in effect, to impair this ancient practice and make it merely a matter of grace on the part of ILECs, when doing

so would inevitably have a tendency to thwart the very purposes that TA96 was designed to allow and encourage.

The Opponents rely heavily on the *Virginia Arbitration Order* for the proposition that there is no obligation to provide the transit function. The *Order* was not meant to bear such a heavy burden. A close examination of the *Order* yields a more equivocal conclusion. The fact is that the FCC, as is the case in many matters, has not definitively made its mind up on the matter. In the meantime, the telecommunications market and its regulation march on. As much as we would wish for definitive guidance from the FCC, the states cannot always wait for that body to rule one way or another—or somewhere in between.

The Opponents have urged that, in any event, the states are preempted from relying on state law to create a transit obligation. This would seem to follow logically from their view that TA96 has established a comprehensive "interconnection agreements-only" approach. The Commission, as noted above, views this approach as insupportable. In fact, it should be clear that Congress contemplated that states *do* have a role in establishing interconnection obligations as long as they do not thwart the provisions and purposes of Section 251. As alluded to earlier, Sec. 251(d)(3) of TA96 specifically provides that "[i]n prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part." It is significant that the wording of this provision mentions both state "policies" and the "purposes" of Sec. 251. It is also useful to observe that the Opponents' "interconnection agreements-only" view would "read out" this savings provision and render it nugatory, because anything done outside of interconnection agreements would, according to the Opponents, be contradictory to Sec. 251. This is yet another example of the consequences of the Opponents' idiosyncratic interpretation of TA96. Establishing a transit obligation and defining reasonable terms and conditions is well within a state's purview, even *arguendo* that no such positive obligation can be derived from TA96.

The real challenge facing the industry and the Commission is not whether there is a legal obligation for ILECs to provide a transit service. The Commission is convinced that there is. The Commission is confident that, should the FCC ever address the issue, it will find the same. The *real* question is what should be the rates, terms and conditions for the provision of that service. Those are matters included or includible under Docket No. P-100, Sub 151. Certainly, interconnection agreements are by and large desirable things, and as many companies as practicable should enter into them. No one really denies that. But it is not always practicable because, among other things, the privilege of petitioning for arbitration under Sec. 252 of TA96 is not symmetrical. This simply reinforces the case that, ultimately, there may need to be a default provision made for those that do not have such agreements or cannot interconnect directly. In such cases, this *may* require ILECs as intermediaries. The equities of the situation are reasonably straightforward—those that

seek to terminate traffic should pay for its termination and the one that transits should be compensated for its services. This *may* also require that an ILEC perform a billing intermediary function—again for reasonable compensation. The system of ubiquitous interconnection and the seamless telecommunications network may well be compromised without this "fail-safe" device. The Commission will move expeditiously on Docket No. P-100, Sub 151 should negotiations come to naught.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of September, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

pb091903.01

Commissioner Robert V. Owens, Jr. did not participate.

ATTACHMENT 15

NORTH CAROLINA UTILITIES COMMISSION

TRANSCRIPT OF TESTIMONY

NEWSOUTH COMMUNICATIONS CORP., ET AL

JOINT PETITION OF NEWSOUTH COMMUNICATIONS CORP., ET AL
FOR ARBITRATION WITH BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. P-772, Sub 8; P-913, Sub 5; P-989, Sub 3; P-824, Sub 6 & P-1202, Sub 4

Volume # 6

DATE January 13, 2005

A. It is about the TIC, but the transit function is still what's being provided.

Q. Right. And I'm trying to focus in on what costs you're trying to recover. And I asked you about page 82, lines 19 through 20, and you say you want to recover the costs of sending records to the CLPs identifying the originating carrier. And I think we just established that the CLPs would be the originating carrier. Would you agree with me that we know who we are?

A. I think you know who you are. Again, this would be the CLP on the terminating end so that they could understand who the traffic was coming from.

Q. There's a CLP on the terminating end?

A. There could be in the scenario of Mr. Meza, sure, or any third party.

Q. Did we ever ask--did we, the originating CLP, ever ask you to send records to the CLP on the terminating end?

A. I don't know if you did or not, but that's part of the service we offer as part of the TIC.

Q. If we told you we didn't want that, could we eliminate the TIC?

A. That's not the only purpose of the TIC. The TIC is

ATTACHMENT 16

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-772, SUB 8
DOCKET NO. P-913, SUB 5
DOCKET NO. P-1202, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.	)	ORDER RULING ON OBJECTIONS AND REQUIRING THE FILING OF THE COMPOSITE AGREEMENT

BEFORE: Commissioner James Y. Kerr, II, Presiding, and Commissioners Robert V. Owens, Jr., and Lorinzo L. Joyner

BY THE COMMISSION: On July 26, 2005, the Commission issued its *Recommended Arbitration Order* (*RAO*) in this docket. The Commission made the following:

FINDINGS OF FACT

1. The term "End User" should be defined as "the customer of a party."

2. The industry standard limitation of liability limiting the liability of the provisioning party to a credit for the actual cost of services or functions not performed or improperly performed should apply.

3. If a party elects not to place standard industry limitations of liability in its contracts with end users or in its tariffs, that party shall indemnify the other party for any loss resulting from its decision not to include the limitation of liability.

4. The rights of end users should be defined pursuant to state contract law.

5. The Agreement should state that incidental, indirect, and consequential damages should be defined pursuant to state law.

6. The proposal of the Joint Petitioners (including NewSouth Communications Corp. (NewSouth), NuVox Communications, Inc. (NuVox), and Xspedius Communications, LLC on behalf of its operating subsidiary, Xspedius Management Co. Switched Services, LLC (Xspedius)) found in Section 10.5 of their Appendix A should be approved.

switched transport) and how this option would be affected by our proposals to alter the current switched access regime.[46]

Based on the foregoing, the Commission finds it appropriate to uphold its decision until such time as the FCC addresses the issue in the context of the *Intercarrier Compensation* rulemaking proceeding.

CONCLUSIONS

The Commission finds it appropriate not to reconsider Finding of Fact No. 14.

FINDING OF FACT NO. 15 (ISSUE NO. 15 – MATRIX ITEM NO. 86(B)): How should disputes over alleged unauthorized access to customer service record (CSR) information be handled under the Agreement?

INITIAL COMMISSION DECISION

The Commission concluded that the Joint Petitioners' proposed language concerning how disputes over alleged unauthorized access to CSR information should be handled under the Agreement is reasonable and appropriate. Accordingly, the Commission adopted the Joint Petitioners' proposed language, as follows, for Sections 2.5.5.2 and 2.5.5.3 of Attachment 6 of the Agreement:

Section 2.5.5.2 – Joint Petitioners

Notice of Noncompliance. If, after receipt of a requested LOA [Letter of Authorization], the requesting Party determines that the other Party has accessed CSR information without having obtained the proper end user authorization, or, if no LOA is provided by the seventh (7^{th}) business day after such request has been made, the requesting Party will send written notice to the other Party specifying the alleged noncompliance. The Party receiving the notice agrees to acknowledge receipt of the notice as soon as practicable. If the Party receiving the notice does not dispute the other Party's assertion of non-compliance, the receiving Party agrees to provide the other Party with notice that appropriate corrective measures have been taken or will be taken as soon as practicable.

Section 2.5.5.3 – Joint Petitioners

Disputes over Alleged Noncompliance. If one Party disputes the other Party's assertion of non-compliance, that Party shall notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. In such instance, the Parties

[46] *Further NPRM*, at ¶ 132.

cooperatively shall seek expedited resolution of the dispute. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and Confidential Information Section in the General Terms and Conditions of this Agreement.

MOTIONS FOR RECONSIDERATION

BELLSOUTH: BellSouth objected to Finding of Fact No. 15 stating that the Commission erred in adopting the Joint Petitioners' proposed language regarding how disputes over alleged unauthorized access to CSR information should be handled under the Agreement.

BellSouth maintained that, in adopting the Joint Petitioners' language, the Commission "agree[d] with the Joint Petitioners that it is unclear from BellSouth's proposed language whether BellSouth gets to pull the plug while a dispute concerning noncompliance is pending." BellSouth stated that its proposed language, however, clearly provides that disputes over unauthorized access to CSR information will be handled pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions section of the Agreement. BellSouth asserted that under the clear wording of the Dispute Resolution provision, access to ordering systems will not be suspended nor will services be terminated while such a dispute is pending. Accordingly, BellSouth argued that its proposal gives the Joint Petitioners exactly what they want.

In contrast, BellSouth maintained, the Joint Petitioners' proposal is unacceptable for many reasons. First, BellSouth argued, the Joint Petitioners' language is unduly vague. For example, BellSouth noted, under the Joint Petitioners' language the offending Party is required to undertake "appropriate corrective measures", which is subject to debate and cannot be reconciled with the Parties' contractual obligation "to access CSR information only in strict compliance with applicable laws." Second, BellSouth maintained, the Joint Petitioners do not impose any time period in which to cure any unauthorized access even though the Joint Petitioners concede that they can produce a LOA in as little as two business days. Third, and perhaps most importantly, BellSouth opined, the Joint Petitioners' proposal provides no remedy or recourse if the accused party ignores its legal and contractual obligations and thus fails to respond to a request to provide an appropriate LOA.

BellSouth argued that under its proposal, suspension and termination rights are triggered only if a Party: (1) disregards its obligation to produce an appropriate LOA upon request; and (2) thereafter fails to dispute (i.e. ignores) a notice that specifies the alleged CSR-related noncompliance. BellSouth maintained that suspension or termination of service based upon undisputed allegations that a party is engaging in unauthorized, unlawful, or fraudulent activity is not a new concept. In fact, BellSouth maintained, the Joint Petitioners retain the right to immediately terminate service provided to their North Carolina end users under similar circumstances.

For the foregoing reasons, BellSouth asserted, the Commission should modify its *RAO* to adopt BellSouth's proposed language for Matrix Item No. 86(B).

INITIAL COMMENTS

BELLSOUTH: BellSouth did not file initial comments on this issue.

JOINT PETITIONERS: The Joint Petitioners stated in initial comments that, although BellSouth claims otherwise, its language proposal with regard to unauthorized access to CSRs does not give the "Joint Petitioners exactly what they want." The Joint Petitioners stated that they have explained as much in their brief. The Joint Petitioners maintained that, despite assurances that BellSouth provides in its brief, BellSouth refuses to incorporate such assurances into its proposed language in North Carolina. Instead, the Joint Petitioners argued that BellSouth intentionally leaves its proposal unacceptably vague and leaves the Joint Petitioners and their customers dangerously exposed to potential coercion and manipulation (when BellSouth will rely solely on the language of the Agreement and not on its curious attempt to get the Commission to approve language that appears designed to provide potential for future coercion and manipulation).

The Joint Petitioners stated that they are fully committed to complying with all regulations regarding access to CSRs. Nevertheless, the Joint Petitioners maintained that their proposal for Matrix Item No. 86(B) ensures that their service is protected while disputes over unproven BellSouth allegations of CSR abuse are resolved by a neutral decision maker such as the Commission. The Joint Petitioners noted that they have agreed to provide a LOA upon request and have never given BellSouth cause for concern in the past. Yet, the Joint Petitioners opined, because disputes may still arise, even when a LOA is provided, the Joint Petitioners wish to remain protected from service suspension or termination unless it is proven they are in violation of the law. Even then, the Joint Petitioners stated they would, with the dispute resolved, prefer an opportunity to cure or correct the violation that does not impact their customers so adversely. The Joint Petitioners argued that BellSouth's language does not afford the Joint Petitioners that protection, but rather effectively entitles BellSouth to suspend or terminate all of the Joint Petitioners' services at its whim. The Joint Petitioners stated that they simply cannot live with the uncertainty and unpredictability in BellSouth's language. Moreover, the Joint Petitioners asserted that nothing in BellSouth's language assures the Joint Petitioners that a LOA will save them from suspension and termination.

The Joint Petitioners noted that, as support of its Objection, BellSouth asserted that the Joint Petitioners "retain the right to immediately terminate service provided to their North Carolina end users under similar circumstances." The Joint Petitioners maintained that this argument, for which BellSouth provides no citation to the NuVox and Xspedius "rights" it refers to, is in any event, fatally flawed. The Joint Petitioners opined that even if the Joint Petitioners retain similar rights as to an individual end user, the situation would not be analogous to the suspension and termination rights afforded BellSouth

under its proposed language. More specifically, the Joint Petitioners stated that BellSouth makes an apples-to-oranges comparison between a retail service offering and a wholesale service offering. In other words, the Joint Petitioners maintained that if the Joint Petitioners were to exercise that right, then only a single North Carolina customer would lose service; but if BellSouth were to exercise its right under its proposed language, then thousands of North Carolina customers would be deprived of service and for actions not any one of them had taken. In essence, the Joint Petitioners argued that BellSouth attempts to interrupt service to the Joint Petitioners' customers as a means of gaining an unfair competitive advantage.

The Joint Petitioners maintained that the Commission should affirm its decision for Matrix Item No. 86(B).

PUBLIC STAFF: The Public Staff stated that it does not believe that BellSouth's objections warrant a change in the Commission's conclusions on this issue rendered in the *RAO*.

REPLY COMMENTS

BELLSOUTH: BellSouth stated that the Joint Petitioners filed comments to BellSouth's Objections as to the Panel's findings for Issue No. 15 (Matrix Item No. 86(B)) regarding disputes over unauthorized access to CSRs. BellSouth noted that, without citing any portion of BellSouth's proposed language, the Joint Petitioners continue to claim that BellSouth's proposal is "unacceptably vague and leaves Joint Petitioners and their customers dangerously exposed to potential coercion and manipulation." BellSouth argued that the Commission should disregard this argument. BellSouth stated that its proposed language clearly provides that disputes over unauthorized access to CSRs will be handled pursuant to the Dispute Resolution provisions in the General Terms and Conditions section of the Agreement. BellSouth noted that, under the clear wording of this provision, access to ordering systems will not be suspended nor will services be terminated while such a dispute is pending. Accordingly, BellSouth stated that its proposal gives the Joint Petitioners exactly what they want, insurance that "their service is protected while disputes over unproven BellSouth allegations of CSR abuse are resolved by a neutral decision maker such as the Commission."

BellSouth maintained that, in adopting BellSouth's proposed language, the Florida PSC recognized that the Joint Petitioners have an irrational fear of BellSouth's language. BellSouth noted that the Florida PSC stated "BellSouth witness Ferguson claims that its proposed modified language to the Interconnection Agreement should have resolved this issue and further does not understand why the proposed language does not calm the Joint Petitioners' fears. We agree." BellSouth asserted that the Commission should not be fooled by the Joint Petitioners' unsupported fears.

Again, BellSouth stated that under its proposal, suspension and termination rights are triggered only if a Party: (1) disregards its obligation to produce an appropriate LOA; and (2) thereafter fails to dispute (i.e. ignores) a notice that specifies the alleged

CSR-related noncompliance (*See* BellSouth Exhibit A, Attachment 6, §§ 2.5.5.2 and 2.5.5.3). For the foregoing reasons, BellSouth stated, the Commission should modify its *RAO* to adopt BellSouth's proposed language for Matrix Item No. 86(B).

JOINT PETITIONERS: The Joint Petitioners did not file reply comments on this issue.

PUBLIC STAFF: The Public Staff reiterated its belief that BellSouth's objections do not warrant a change in the Commission's conclusions on this issue.

DISCUSSION

The Commission notes that BellSouth asserted that the Joint Petitioners' proposed language is unacceptable for many reasons. First, BellSouth argued that the Joint Petitioners' language is unduly vague. The Commission notes that the Joint Petitioners also asserted that BellSouth's proposed language is unacceptably vague. The Commission does not agree with BellSouth that the Joint Petitioners' proposed language is unduly vague.

Second, BellSouth maintained that the Joint Petitioners' proposed language does not impose any time period in which a Party must cure any unauthorized access even though the Joint Petitioners concede that they can produce a LOA in as little as two business days. The Commission believes that this argument by BellSouth does have merit. The Commission believes that it is appropriate to impose time periods in the language. Therefore, the Commission concludes that it is appropriate to modify the Joint Petitioners' proposed language in this regard, as follows:

Section 2.5.5.2
Notice of Noncompliance. If, after receipt of a requested LOA, the requesting Party determines that the other Party has accessed CSR information without having obtained the proper end user authorization, or, if no LOA is provided by the seventh (7^{th}) business day after such request has been made, the requesting Party will send written notice to the other Party specifying the alleged noncompliance. The Party receiving the notice agrees to acknowledge receipt of the notice as soon as practicable. If the Party receiving the notice does not dispute the other Party's assertion of non-compliance, the receiving Party agrees to provide the other Party with notice that appropriate corrective measures have been taken or will be taken ~~as soon as practicable~~ **within seven (7) business days**.

Section 2.5.5.3
Disputes over Alleged Noncompliance. If one Party disputes the other Party's assertion of non-compliance, that Party shall notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within ~~a reasonable time~~ **seven (7) business days** or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the

non-compliance **within seven (7) business days**, the requesting Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. In such instance, the Parties cooperatively shall seek expedited resolution of the dispute. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and Confidential Information Section in the General Terms and Conditions of this Agreement.

Third, and perhaps most importantly, BellSouth opined, the Joint Petitioners' proposal provides no remedy or recourse if the accused Party ignores its legal and contractual obligations and thus fails to respond to a request to provide an appropriate LOA. The Commission believes that, under the Joint Petitioners' proposed language, if the accused Party ignores the request to provide an appropriate LOA or fails to respond to a notice of noncompliance, the other Party should proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions of the Agreement. The Commission believes that invoking the dispute resolution provisions sufficiently qualifies as a remedy or recourse for the accusing Party and is a more reasonable course of action in such circumstances.

The Commission believes that BellSouth has provided no new or compelling arguments, with the exception of not imposing specific time periods, which warrant the Commission to alter its decision to adopt the Joint Petitioners' proposed language. The Commission does, however, believe it is appropriate to alter the Joint Petitioners' proposed language to include specific time periods for action by an accused Party.

CONCLUSIONS

The Commission finds it appropriate to deny BellSouth's Motion for Reconsideration on this issue, thereby affirming its decision to adopt the Joint Petitioners' proposed language concerning disputes over alleged unauthorized access to CSR information. However, the Commission does find it appropriate to alter the Joint Petitioners' proposed language to include specific time periods for action by an accused Party, as follows:

Section 2.5.5.2
Notice of Noncompliance. If, after receipt of a requested LOA [Letter of Authorization], the requesting Party determines that the other Party has accessed CSR information without having obtained the proper end user authorization, or, if no LOA is provided by the seventh (7^{th}) business day after such request has been made, the requesting Party will send written notice to the other Party specifying the alleged noncompliance. The Party receiving the notice agrees to acknowledge receipt of the notice as soon as practicable. If the Party receiving the notice does not dispute the other Party's assertion of non-compliance, the receiving Party agrees to provide the other Party with notice that appropriate corrective measures have been taken or will be taken ~~as soon as practicable~~ **within seven (7) business days**.

Section 2.5.5.3

Disputes over Alleged Noncompliance. If one Party disputes the other Party's assertion of non-compliance, that Party shall notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within ~~a reasonable time~~ **seven (7) business days** or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance **within seven (7) business days**, the requesting Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. In such instance, the Parties cooperatively shall seek expedited resolution of the dispute. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and Confidential Information Section in the General Terms and Conditions of this Agreement.

FINDING OF FACT NO. 16 (ISSUE NO. 16 – MATRIX ITEM NO. 88): What rate should apply for Service Date Advancement (a/k/a service expedites)?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth must provide service expedites at TELRIC-compliant rates. The Commission further ordered BellSouth and the Joint Petitioners to negotiate in good faith an appropriate rate for service expedites. The Commission concluded that if the parties are unable to negotiate a rate, BellSouth should submit a TELRIC cost study for the Commission's review and approval.

MOTIONS FOR RECONSIDERATION

BELLSOUTH: BellSouth objected to Finding of Fact No. 16 stating that the Commission erred, as a matter of law, in arbitrating this issue as it involves a service that BellSouth is not obligated to provide under Section 251. Additionally, BellSouth maintained that the Commission erred, as a matter of law, in ruling that BellSouth must expedite service orders at TELRIC-compliant rates.

BellSouth stated that, as an initial matter, the Commission should refrain from arbitrating this issue. BellSouth noted that, as stated in its brief, this item is not appropriate for arbitration under Section 252 of TA96, because BellSouth has no Section 251 obligation to expedite service orders. BellSouth asserted that compulsory arbitration under Section 252 should be properly limited to those issues necessary to implement a Section 252 agreement. BellSouth argued that expedite charges are not necessary to implement the Agreement. As such, BellSouth commented that the Commission should reconsider its initial decision and decline to arbitrate Matrix Item No. 88.

BellSouth stated that, assuming *arguendo* that the Commission addresses the issue, the Commission should reconsider its *RAO* because it is incorrect as a matter of law. BellSouth noted that, in finding that BellSouth has an obligation to provide expedited

ILEC provides to itself. The Commission also believes that expediting service to customers is simply one method by which BellSouth can provide access to UNEs and that, since BellSouth offers service expedites to its retail customers, it must provide service expedites at TELRIC rates pursuant to Section 251 and Rule 51.311(b). As noted by the Public Staff in its proposed order, the $200 per circuit, per day rate from BellSouth's federal access tariff that BellSouth proposes as its rate to the Joint Petitioners is the rate BellSouth charges its large retail customers. However, there is no cost support for the rate. Based upon the foregoing, the Commission finds it appropriate to uphold the *RAO* in this regard.

CONCLUSIONS

The Commission finds it appropriate to deny BellSouth's Objection to Finding of Fact No. 16, thereby affirming its initial decision that BellSouth must provide service expedites at TELRIC-compliant rates. In addition, BellSouth and the Joint Petitioners should negotiate, in good faith, an appropriate rate for service expedites. If the parties are unable to negotiate a rate, BellSouth should submit a TELRIC cost study for the Commission's review and approval.

FINDING OF FACT NO. 17 (ISSUE NO. 17 – MATRIX ITEM NO. 97): When should payment of charges for service be due?

INITIAL COMMISSION DECISION

The Commission concluded that the payment due date should be 26 days from the date of receipt of the bill. Accordingly, the Commission required the Joint Petitioners and BellSouth to properly amend the proposed language in the Agreement in Attachment 7, Section 1.4, in accordance with the decision.

MOTIONS FOR RECONSIDERATION

BELLSOUTH: BellSouth objected to Finding of Fact No. 17 stating that the Commission should clarify that its Payment Due Date ruling applies only to bills that are received electronically.

BellSouth stated that it seeks clarification regarding the Commission's Finding of Fact No. 17, as well as its conclusion with respect to Matrix Item No. 97. Specifically, BellSouth noted that the Commission concluded that "the payment due date should be 26 days from the date of receipt of the bill." BellSouth stated that it does not object to the Commission's ruling to the extent that it sets a payment due date of 26 days from receipt of the bill, for electronic bills only. BellSouth maintained that this clarification should not concern the Joint Petitioners because they receive most of their bills electronically. Further, BellSouth commented that this clarification is necessary because BellSouth does not know when bills that are sent via U.S. mail are received by the Joint Petitioners.

BellSouth noted that the Agreement that will ultimately be approved by the Commission will be available for adoption by other CLPs. BellSouth stated that, unlike the Joint Petitioners, such CLPs may not receive the majority of their bills in an electronic format (it is a CLP's choice as to whether it wants to receive bills electronically). BellSouth maintained that, for bills that are mailed, in addition to not knowing when such bills are received by a CLP, BellSouth has a concern that a CLP may abuse the "date received" standard in order to avoid the timely payment of bills. Accordingly, BellSouth respectfully requested the Commission to clarify that for electronic bills only, the payment due date should be 26 days from the receipt of such bills; in all other instances, the payment due date should be the next bill issuance date. BellSouth asserted that such clarification should have a minimal impact on the Joint Petitioners, and it will have no impact whatsoever if the Joint Petitioners elect to receive all bills electronically. Further, BellSouth argued, such clarification will protect BellSouth from abuse by CLPs that do not receive bills in an electronic format.

INITIAL COMMENTS

BELLSOUTH: BellSouth did not file initial comments on this issue.

JOINT PETITIONERS: The Joint Petitioners noted that BellSouth's Objection appears to be in the nature of a request for clarification, and yet it would vitiate a good portion of the Commission's finding. The Joint Petitioners maintained that BellSouth wants the Commission to clarify its decision to the extent that the 26-days from receipt payment period will apply only to bills received electronically. To support its request, the Joint Petitioners noted that BellSouth claimed: (1) that the clarification should not concern the Joint Petitioners because they receive most of their bills electronically; (2) that the clarification is necessary because BellSouth does not know when bills sent via U.S. mail are received; and (3) that other CLPs can adopt this Agreement and take advantage of the "date received" standard. The Joint Petitioners argued that these reasons for clarification are unconvincing and should not at all be considered as grounds for modifying the Commission's decision.

The Joint Petitioners asserted that BellSouth's claim that the Joint Petitioners should not be concerned with such a clarification is unduly presumptuous and should not be considered. The Joint Petitioners argued that they are indeed concerned because they do not receive all bills electronically. The Joint Petitioners argued that they need sufficient time to review bills, regardless of the format in which they are received. In addition, the Joint Petitioners noted, BellSouth's claim that it cannot determine the receipt date for bills sent by U.S. mail already has been disproven. As the Joint Petitioners have maintained, and as the Commission recognized in its recommendation, courier services – such as UPS and FedEx – and the United States Postal Service have long provided return receipt or delivery confirmation services to their customers. The Joint Petitioners also stated that, as for other CLPs taking advantage of the "date received" standard, this is an argument based upon nothing but unsupported speculation that other CLPs could, or somehow would, manipulate the date received standard, which is easily made transparent.

The Joint Petitioners argued that BellSouth presented no compelling reason why the Joint Petitioners' electronic and mailed bills should be treated differently. Accordingly, the Joint Petitioners asserted that the Commission should reject BellSouth's request and keep with its initial finding that the payment due date will be 26 days from bill receipt, regardless of the format in which the bill is delivered.

PUBLIC STAFF: The Public Staff stated that it does not believe that BellSouth's objections warrant a change in the Commission's conclusions on this issue rendered in the *RAO*.

REPLY COMMENTS

BELLSOUTH: BellSouth asserted that the Commission should clarify that its Payment Due Date ruling applies only to bills that are received electronically.

BellSouth maintained that it is disappointing, but not surprising, that the Joint Petitioners object to BellSouth's request for clarification regarding the Panel's findings as to Matrix Item No. 97 and the payment due date. BellSouth stated that, despite the fact that the Joint Petitioners receive most of their bills electronically and can choose to receive all bills electronically, the Joint Petitioners oppose BellSouth's request for the Commission to clarify that its payment due date ruling applies to electronic bills only. BellSouth argued that this clarification is necessary because BellSouth does not know when bills that are sent via U.S. mail are received by the Joint Petitioners. BellSouth noted that the Joint Petitioners appear to assert that BellSouth can (and should) incur the additional cost and time necessary to use delivery confirmation services to track receipt of mailed bills. BellSouth noted that the Joint Petitioners have not offered to pay for such additional costs, and imposing such additional costs is inappropriate given the fact that this Commission and the FCC have already found that BellSouth's billing practices are nondiscriminatory and provide CLPs with a meaningful opportunity to compete in the local market.

Accordingly, BellSouth requested the Commission to clarify that, for electronic bills only, the payment due date should be 26 days from the receipt of such bills; in all instances, the payment due date should be by the next bill issuance date. In the alternative, BellSouth maintained that the Commission should clarify that the Joint Petitioners are required to pay BellSouth for all costs associated with confirming delivery of mailed bills.

JOINT PETITIONERS: The Joint Petitioners did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff reiterated its belief that BellSouth's objections do not warrant a change in the Commission's conclusions on this issue.

DISCUSSION

The Commission notes that, in its *RAO*, it found that the Commission's decision in the ITC^DeltaCom Communications, Inc. (ITC^DeltaCom) / BellSouth arbitration proceeding was reasonable and applicable to this proceeding as well. The Commission noted that BellSouth did not provide any compelling arguments why a 26-day billing period, as was adopted in the ITC^DeltaCom/BellSouth docket, was not appropriate in this proceeding. The Commission does not believe that BellSouth has provided any new or compelling reasons for the Commission to alter its initial decision on this issue. The Commission's decision in the ITC^DeltaCom/BellSouth arbitration docket did not distinguish between electronic or mailed bills, and, therefore, it is not appropriate for the decision in this case to make such a distinction. Therefore, the Commission finds it appropriate to affirm its initial decision on this issue.

CONCLUSIONS

The Commission finds it appropriate to deny BellSouth's Objection to Finding of Fact No. 17, thereby affirming its initial decision that the payment due date should be 26 days from the date of receipt of the bill.

FINDING OF FACT NO. 18 (ISSUE NO. 18 – MATRIX ITEM NO. 100):

Joint Petitioners' Issue Statement: Should a CLP be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

BellSouth's Issue Statement: Should a CLP be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

INITIAL COMMISSION DECISION

The Commission concluded that it is appropriate to adopt the Joint Petitioners' proposed language, as follows, concerning suspension or termination notices for Section 1.7.2 of Attachment 7 of the Agreement:

> **Section 1.7.2 – Joint Petitioners**
> Each Party reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the Due Date, the billing Party may provide written notice to the other Party that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, as indicated on the notice in dollars and cents, is not received by the fifteenth (15^{th}) calendar day following the date of the notice. In addition, the billing Party may, at the same time, provide written notice that the billing Party may discontinue the provision of

existing services to the other Party if payment of such amounts, as indicated on the notice (in dollars and cents), is not received by the thirtieth (30^{th}) calendar day following the date of the Initial Notice.

MOTIONS FOR RECONSIDERATION

BELLSOUTH: BellSouth objected to Finding of Fact No. 18 stating that the Commission erred in adopting the Joint Petitioners' proposed language. BellSouth argued that the Commission's ruling effectively gives the Joint Petitioners a rolling 15-day extension to pay undisputed billings.

BellSouth asserted that in adopting the Joint Petitioners' proposed language (and thus obligating BellSouth to provide service and access to ordering systems despite not being paid undisputed, past due, and previously billed charges), the Commission concluded that "the potential sanctions for nonpayment are too sever[e] to let the risk of calculation errors potentially occur." However, BellSouth stated that it has committed to advise the Joint Petitioners of the undisputed, past due, and previously billed amounts that must be paid to avoid suspension or termination of service.

Further, BellSouth maintained that the Joint Petitioners know when they receive bills, they know when the bills are due, and they concede that the amount of such bills can be predicted with a reasonable degree of accuracy. Moreover, BellSouth asserted that the Joint Petitioners presented no evidence that so-called "calculation errors" have ever resulted in suspension or termination action and did not produce one example of any suspension/termination notice that required the undertaking of any calculation on behalf of the Joint Petitioners. Moreover, BellSouth stated that Joint Petitioners witness Russell testified that NuVox has paid all BellSouth bills in a timely manner for seven years. BellSouth asserted that, to state the obvious, a CLP that pays its bills in a timely manner does not interact with BellSouth's collections organization. Accordingly, BellSouth argued that the Commission should disregard (or at least discount) the Joint Petitioners' hypothetical concerns about BellSouth's collections practices.

Accordingly, BellSouth maintained that there is no guess work involved in BellSouth's collections process and, thus, no potential for calculation errors. BellSouth argued that holding otherwise allows the Joint Petitioners to have a revolving extension of payment of undisputed, past due, previously billed amounts – a privilege not afforded to others similarly situated in the industry.

Finally, BellSouth asserted that termination of service for nonpayment is a universally accepted and straightforward principle. BellSouth stated that the financial risk BellSouth faces when CLPs do not pay for services rendered is no "game", but a stark reality of the telecommunications world. Accordingly, BellSouth maintained that the Commission should: (1) disregard the Joint Petitioners' unsupported assertion about collections "shell games"; and (2) allow BellSouth to protect its financial interest by giving BellSouth the right to discontinue providing service to any Joint Petitioner that fails to timely pay

for services rendered. BellSouth asserted that the Commission should reconsider its initial decision and adopt BellSouth's proposal for Matrix Item No. 100.

INITIAL COMMENTS

BELLSOUTH: BellSouth did not address this issue in its initial comments.

JOINT PETITIONERS: The Joint Petitioners noted that BellSouth argued that the Commission's decision "allows the Joint Petitioners to have a revolving extension for payment of undisputed, past due, previously billed amounts – a privilege not afforded to others similarly situated in the industry." The Joint Petitioners argued that BellSouth's conclusion is nonsensical and unpersuasive. Accordingly, the Joint Petitioners recommended that the Commission should disregard BellSouth's argument and affirm its initial decision in the *RAO*.

The Joint Petitioners maintained that BellSouth provides no support for its "rolling 15-day extension" argument, as there is none. The Joint Petitioners asserted that the Commission's decision on this issue has nothing to do with when payment is due or at which point late payment charges will continue to accrue. The Joint Petitioners argued that by adopting the Joint Petitioners' position and language on this issue, the Commission's *RAO* is reasonably attempting to eliminate the potential for calculation errors that could result in suspension or termination – events that could have a hugely detrimental impact on the Joint Petitioners and their North Carolina customers. The Joint Petitioners stated that the Commission's decision also ensures that the Joint Petitioners will have a full 15 and 30 days within which to verify the amount demanded and make payment to BellSouth before the threat of suspension or termination arises and without the undue complexity and unfairness of aggregating and collapsing these 15 to 30-day notice periods for subsequent accounts that may become past due (for which a separate billing notice will be sent and the same straightforward process would apply).

The Joint Petitioners noted that in support of its objection, but not clearly related to its argument, BellSouth also pointed to its post-hearing offer to advise the Joint Petitioners of additional amounts due to avoid suspension and termination that are not included in the figure it provides with the notice. For the reasons explained in the Joint Petitioners' brief, the Joint Petitioners asserted that this commitment to provide additional unspecified information upon request and within an unspecified timeframe does not satisfactorily eliminate the potential for erroneous or even wrongful suspension or termination. To the contrary, the Joint Petitioners argued that it seems to add more uncertainty to the process, as the Joint Petitioners and this Commission have no grounds upon which they could conclude that such information will be timely, accurate, or reliable.

Accordingly, the Joint Petitioners recommended that the Commission affirm its finding on this item in its *RAO*.

PUBLIC STAFF: The Public Staff stated that it does not believe that BellSouth's objections warrant a change in the Commission's conclusions on this issue rendered in the *RAO*.

REPLY COMMENTS

BELLSOUTH: BellSouth stated that the Commission Panel erred in adopting the Joint Petitioners' proposed language because there is no "guess work" involved with the Joint Petitioners knowing that they should timely pay undisputed amounts. BellSouth argued that the Commission's ruling effectively gives the Joint Petitioners a rolling 15-day extension to pay undisputed billings.

BellSouth noted that, in opposing BellSouth's Objections to the Commission's findings regarding Matrix Item No. 100, the Joint Petitioners asserted that the "Commission's decision on this issue has nothing to do [with] when payment is due" and that by adopting the Joint Petitioners' position the Commission "reasonably attempt[ed] to eliminate the potential for calculation errors that could result in suspension or termination [of service]." First, BellSouth stated that it agrees that this issue has nothing to do with the Joint Petitioners' obligation to timely pay previously billed amounts. Second, BellSouth noted, regarding supposed calculation errors, the Joint Petitioners provide no evidence in support of, or attempt to articulate how, such errors could occur given the fact that BellSouth has committed to advise the Joint Petitioners of the undisputed, past due, and previously billed amounts that must be paid to avoid suspension or termination of service. Indeed, BellSouth noted that the Florida PSC determined that BellSouth's language and practice takes any guesswork out of the collection process. BellSouth asserted that the Commission should reach the same conclusion here.

Accordingly, BellSouth argued that the Commission should reverse its prior ruling and find that there is no guesswork involved in BellSouth's collections process and find in favor of BellSouth. BellSouth asserted that holding otherwise allows the Joint Petitioners to have a revolving extension for payment of undisputed, past due, previously billed amounts – a privilege *not* afforded to others similarly situated in the industry. BellSouth noted that the Florida PSC found, "We do not believe the Joint Petitioners should view the due date of a treatment notice as an automatic extension of the payment due date of the original bill."

JOINT PETITIONERS: The Joint Petitioners did not address this issue in their reply comments.

PUBLIC STAFF: The Public Staff reiterated its belief that BellSouth's objections do not warrant a change in the Commission's conclusions on this issue.

DISCUSSION

The Commission notes that BellSouth has provided no new or compelling arguments concerning this issue. The Commission further notes that BellSouth's commitment to advise the Joint Petitioners of undisputed, past due, and previously billed amounts that must be paid to avoid suspension or termination of service relies exclusively on a request made by a Joint Petitioner (i.e., BellSouth will provide this information only upon request by the competitor).

The substantive difference between BellSouth's proposed language and the Joint Petitioners' proposed language concerns amounts not in dispute that become past due subsequent to the issuance of the written notice. Under BellSouth's proposed language, if a Joint Petitioner pays all past due, undisputed amounts within 15 days of a notice, but other amounts become past due subsequent to the issuance of the notice, then the Joint Petitioner will be subject to suspension or termination by BellSouth. The Commission continues to believe that the potential sanctions for nonpayment are too severe to let the risk of calculation errors potentially occur. Under the Joint Petitioners' proposed language, BellSouth must explicitly show the amount due, in dollars and cents, to avoid suspension or termination; the Commission continues to believe that this language is appropriate and reasonable.

Therefore, the Commission concludes that it is appropriate to deny BellSouth's Motion for Reconsideration concerning Finding of Fact No. 18, thereby affirming its decision to adopt the Joint Petitioners' proposed language for Section 1.7.2 of Attachment 7 of the Agreement.

CONCLUSIONS

The Commission finds it appropriate to deny BellSouth's Motion for Reconsideration concerning Finding of Fact No. 18, thereby affirming its decision to adopt the Joint Petitioners' proposed language for Section 1.7.2 of Attachment 7 of the Agreement.

FINDING OF FACT NO. 19 (ISSUE NO. 19 – MATRIX ITEM NO. 101): How many months of billing should be used to determine the maximum amount of the deposit?

INITIAL COMMISSION DECISION

The Commission concluded that the deposit requirements specified in Commission Rule R12-4 are applicable and the language proposed by BellSouth should be incorporated into the Agreement.

MOTIONS FOR RECONSIDERATION

JOINT PETITIONERS: The Joint Petitioners sought reconsideration of Finding of Fact No. 19 arguing that the Commission recommended that the Agreement entitled